

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

---

**In re:**

**TERESA B. REYES,**

**Debtor**

**Bankruptcy No. 04-35159  
Chapter 7**

**NOTICE OF MOTION AND MOTION  
OBJECTING TO CLAIMED  
EXEMPTION**

---

TO: The Debtors and other entities specified in Local Rule 9013-3.

1. Michael S. Dietz, Trustee of the above bankruptcy estate moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion on November 29, 2004, at 1:30 p.m., in Courtroom 228B, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than 1:30 p.m. on November 22, 2004, which is seven days before the hearing, or filed and served by mail not later than November 19, 2004, which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on September 3, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. The Debtor has scheduled a Company 401k with Hearth & Home Technologies valued at \$14,000 and claimed as exempt on Schedule C under 11 U.S.C. §522(d)(10)(E). Attached as Exhibit “A” is a true and correct copy of Schedule C filed in this case.

7. Movant objects to the above noted exemptions claimed in that schedule for the following reasons: The Trustee is without sufficient information to determine the exact nature of the retirement plan. Attached hereto as Exhibit “B” is a true and correct copy of the statement provided by Debtor.

**WHEREFORE**, the Trustee moves the Court for an Order denying the claimed exemption of the Company 401k with Hearth & Home Technologies.

Dated: October 21, 2004

/s/ Michael S. Dietz

Michael S. Dietz  
Registration No. 188517  
DUNLAP & SEEGER, P.A.  
Attorneys for Trustee  
206 S. Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903  
Telephone: (507) 288-9111

**VERIFICATION**

I, Michael S. Dietz, Trustee, the moving party named in the foregoing Notice of Hearing and Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 21, 2004

/s/ Michael S. Dietz

---

Michael S. Dietz, Trustee  
206 S. Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903  
Telephone: (507) 288-9111

## EXHIBIT “A”

In re **Teresa Barba Reyes**,  
Debtor

Case No. \_\_\_\_\_

## SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

*[Check one box]*

- ☒ 11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). Note: These exemptions are available only in certain states.  
☐ 11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
<b><u>Cash on Hand</u></b>			
\$ 25.00 cash	11 U.S.C. § 522(d)(5)	25.00	25.00
<b><u>Checking, Savings, or Other Financial Accounts, Certificates of Deposit</u></b>			
Wells Fargo, 1701 Greenview Place SW, Rochester	11 U.S.C. § 522(d)(5)	20.00	20.00
<b><u>Household Goods and Furnishings</u></b>			
Used furnishing nothing worth more than \$ 400	11 U.S.C. § 522(d)(3)	1,000.00	1,000.00
<b><u>Wearing Apparel</u></b>			
Used apparel	11 U.S.C. § 522(d)(3)	1,000.00	1,000.00
<b><u>Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans</u></b>			
Company 401K	11 U.S.C. § 522(d)(10)(E)	14,000.00	14,000.00
<b><u>Other Liquidated Debts Owning Debtor Including Tax Refund</u></b>			
2004 Tax Refund	11 U.S.C. § 522(d)(5)	3,000.00	3,000.00
<b><u>Other Contingent and Unliquidated Claims of Every Nature</u></b>			
Earned but unpaid income	11 U.S.C. § 522(d)(5)	700.00	700.00
<b><u>Automobiles, Trucks, Trailers, and Other Vehicles</u></b>			
1/2 interest in Ford Winstar with 145,000 miles	11 U.S.C. § 522(d)(2)	0.00	1,500.00

## EXHIBIT “B”

For Period: April 01, 2004 through June 30, 2004

**Account Balance Summary For:**

2124 RLB  
TERESA REYES  
1756 HWY 81 S  
LOT 69  
LAKE CITY, MN 55041

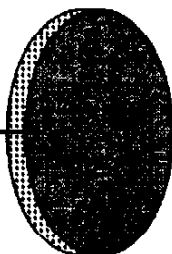
Date of Birth: 06/11/1951

Current Status in Plan: ELIGIBLE NOT DEFERRING  
You have elected to save:  
0% of your pay on a pre-tax basis (tax deferred)  
0% of your pay on an after-tax basis

Want to learn more about  
managing the demands on your  
paying? Get some valuable tips  
on balancing your financial  
goals in this quarter's Financial  
Edition. You'll also find helpful  
information on dealing with  
debt.

	04/01/2004 to 06/30/2004	Year to Date
<b>Beginning balance</b>	<b>\$14,943.76</b>	<b>\$12,822.98</b>
Contributions:		
Employer Contributions	\$0.00	\$2,386.94
Dividend	\$13.74	\$25.96
Change in Market Value	\$497.07	\$118.67
<b>Ending balance</b>	<b>\$15,454.56</b>	<b>\$15,454.56</b>

Your Account by Money Type



Employer Contributions \$15,455  
130% Percentages may not be exact due to rounding.

Investment Summary			
Ending Balance	Percent	Current	Year End
By Source	Weighted	Value	Value
Employer Contributions	100%	\$15,454.56	\$15,454.56
<b>Total</b>		<b>\$15,454.56</b>	<b>\$15,454.56</b>



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

Bankruptcy Case No. 04- 35159

TERESA B. REYES,

Debtor.

---

**UNSWORN CERTIFICATE OF SERVICE**

I, Emily D. Stenhoff, declare under penalty of perjury that on October 21, 2004, I mailed copies of the following:

Trustee's Notice of Motion and Motion Objecting to Claimed Exemption

by US Mail, postage pre-paid, to each entity named below at the address stated below:

OFFICE OF THE US TRUSTEE  
1015 UNITED STATES COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

MICHAEL J. QUINN  
400 S BROADWAY STE 201  
ROCHESTER MN 55904

TERESA B. REYES  
1756 HWY 61 S 69  
LAKE CITY MN 55041

Executed on October 21, 2004

Signed: Emily Stenhoff

Emily D. Stenhoff  
DUNLAP & SEEGER, P.A.  
P O BOX 549  
ROCHESTER MN 55903-0549  
(507) 288-9111



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

---

In re:

**TERESA B. REYES,**

**Debtor**

Bky Case No. **04- 35159**  
Chapter 7

**ORDER SUSTAINING TRUSTEE'S  
OBJECTION TO DEBTORS' CLAIM  
OF EXEMPTION**

AT ST. PAUL, MINNESOTA,

This Chapter 7 case came on before the Court on November 29, 2004, for a hearing on the

Trustee's objection to the Debtor's claimed exemption of the following property:

Company 401k with Hearth & Home Technologies.

Appearances, if any, were noted on the record. Upon the documents on file herein and the arguments of counsel:

**IT IS HEREBY ORDERED AND DETERMINED:**

1. The Trustee's objection is sustained.
2. The Debtor's interest in the Company 401k with Hearth & Home Technologies is not exempt and is property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: November \_\_, 2004

BY THE COURT:

---

Gregory F. Kishel  
United States Bankruptcy Judge